Filed 8/15/19 P. v. Baselyos CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JASON BASELYOS, Defendant and Appellant.	B293856 (Los Angeles County Super. Ct. No. LA081267)

APPEAL from an order of the Superior Court of Los Angeles County, Neetu S. Badhan-Smith, Judge. Affirmed.

Law Office of Edward J. Blum and Edward J. Blum, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jason Baselyos appeals the trial court's denial of his motion to reduce his convictions for firearms possession to misdemeanors. We affirm the trial court's order.

PROCEDURAL BACKGROUND[1]

On August 20, 2015, Baselyos pled no contest to felony possession of a machinegun (Pen. Code, § 32625, subd. (a)),[2] felony possession of a short-barreled rifle or shotgun (§ 33215), and misdemeanor receiving stolen property valued at less than $950 (§ 496, subd. (a)). The trial court suspended imposition of sentence and placed Baselyos on formal probation for three years, on condition, inter alia, that he spend 270 days in jail. It imposed a restitution fine, a suspended probation revocation restitution fine, a criminal conviction assessment, and a court operations assessment.

The trial court granted Baselyos's motion for early termination of his probation, and thereafter additionally granted his request to dismiss the charges under section 1203.4. However, it denied Baselyos's request to reduce the two felony firearm offenses to misdemeanors pursuant to section 17, subdivision (b).

Baselyos moved for reconsideration of the trial court's ruling, arguing that reduction was required because both crimes were "wobblers." The People objected that one of the offenses in question was not a wobbler, and thus could not be reduced under section 17, subdivision (b). On November 2, 2018, the trial court

---

1 Because the facts of the underlying case are irrelevant to the issue presented on appeal, we do not recite them here.

2 All further undesignated statutory references are to the Penal Code.

denied the motion, explaining: "The court's denying it for a totally different reason. When reading 17(b), in the first sentence, it indicates that it's the discretion of the court to grant 1203.4 and [the court] is under no obligation to grant 17(b). [¶] As indicated, these charges were serious. As I look at them, they are felonies and I don't think they warrant reduction."

Baselyos timely filed a notice of appeal from the trial court's order.

DISCUSSION

Baselyos's offenses did not convert to misdemeanors under section 17, subdivision (b)(1) and the trial court's denial of his motion was not erroneous

Baselyos contends that under section 17, subdivision (b), the trial court was required to grant his request to reduce his offenses to misdemeanors. He is incorrect.

We review a trial court's discretionary ruling on a motion to reduce a felony to a misdemeanor pursuant to section 17, subdivision (b), for abuse of discretion. (*People v. Mullins* (2018) 19 Cal.App.5th 594, 611.) Where the court's ruling on such a motion presents a question of law, we exercise independent review. (*People v. Willis* (2013) 222 Cal.App.4th 141, 144.)

"The Legislature has classified most crimes as *either* a felony or a misdemeanor, by explicitly labeling the crime as such, or by the punishment prescribed." (*People v. Park* (2013) 56 Cal.4th 782, 789; *People v. Tran* (2015) 242 Cal.App.4th 877, 885.) However, there is a "special class of crimes involving conduct that varies widely in its level of seriousness. Such crimes, commonly referred to as 'wobbler[s]' [citation], are chargeable or, in the discretion of the court, punishable as either a felony *or* a misdemeanor; that is, they are punishable either by

a term in state prison or by imprisonment in county jail and/or by a fine." (*People v. Park*, at p. 789; *People v. Tran*, at p. 885.) " ' "A wobbler offense charged as a felony is regarded as a felony for all purposes until imposition of sentence or judgment. [Citations.] If state prison is imposed, the offense remains a felony; if a misdemeanor sentence is imposed, the offense is thereafter deemed a misdemeanor. [Citations.]" ' [Citation.]" (*People v. Tran*, at p. 885.)

Possession of a short-barreled rifle or shotgun (§ 33215) is punishable by "imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170," and is therefore a wobbler offense. (§ 33215; § 17, subd. (a); *People v. Park*, *supra*, 56 Cal.4th at p. 789 & fn. 4.) Possession of a machinegun (§ 32625, subd. (a)) is punishable by "imprisonment pursuant to subdivision (h) of Section 1170, or by a fine not to exceed . . . $10,000 . . . , or by both that fine and imprisonment." Section 18, subdivision (b) provides that every offense prescribed to "be a felony punishable by imprisonment or by a fine, but without an alternate sentence to the county jail for a period not exceeding one year, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both." Accordingly, section 32625 is also a wobbler. (See *People v. Mauch* (2008) 163 Cal.App.4th 669, 675.)

Section 17, subdivision (b) governs reduction of wobbler offenses to misdemeanors. That statute states, in pertinent part: "When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] (1) After a

judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. [¶] . . . [¶] (3) When the court grants probation to a defendant and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor."[3]

Thus, Baselyos's offenses potentially could have become misdemeanors in one of two ways. First, under subdivision (b)(1) of section 17, "a felony automatically converts to a misdemeanor when the judgment imposes a punishment other than imprisonment" in state prison or in county jail pursuant to section 1170, subdivision (h)(1). (*People v. Kaufman* (2017) 17 Cal.App.5th 370, 396; *People v. Willis*, *supra*, 222 Cal.App.4th at p. 144.)

Second, the trial court, after considering the facts of the offense and Baselyos's characteristics, had discretion to reduce the firearm offenses to misdemeanors under subdivision (b)(3) of section 17. (*People v. Tran*, *supra*, 242 Cal.App.4th at p. 885; *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978.) Under subdivision (b)(3), Baselyos was not entitled to relief simply because he successfully completed probation. (*People v. Tran*, at pp. 891—892 ["A convicted defendant is not *entitled* to the benefits of section 17(b) as a matter of right. Rather, a reduction under section 17(b) is an act of leniency by the trial court"].) Reduction under subdivision (b)(3) is not automatic; "a

---

[3] Section 17, subdivisions (b)(2), (4), and (5) provide for other circumstances in which an offense is a misdemeanor, but none is applicable here.

wobbler becomes a 'misdemeanor for all purposes' under section 17(b)(3) only when the court takes affirmative steps to classify the crime as a misdemeanor." (*People v. Park*, *supra*, 56 Cal.4th at p. 793; *People v. Glee* (2000) 82 Cal.App.4th 99, 103 ["a felony can never be converted *automatically* to a misdemeanor under" subdivision (b)(3)].)

The trial court denied Baselyos's request to reduce his offenses to misdemeanors on the ground the crimes were serious. Baselyos does not argue that the trial court abused its discretion in so finding. Accordingly, we do not address the question of whether the court abused its discretion under section 17, subdivision (b)(3). Instead, Baselyos argues that under section 17, subdivision (b)(1), "when a person has been given a sentence other than" imprisonment, "the crime is a misdemeanor for all purposes." Because the trial court here "imposed a probationary sentence which [appellant] successfully completed," he urges, "[r]eduction to a misdemeanor should have been granted as a matter of right."

Baselyos's superficial reading of the statute, unsupported by further analysis or citation to authority, is incorrect. When, as here, a court suspends sentence and grants formal probation, with a requirement that the defendant serve time in jail as a condition of probation, section 17, subdivision (b)(1) does not apply. "It is settled that where the offense is alternatively a felony or misdemeanor . . . and the court suspends the pronouncement of judgment or imposition of sentence and grants probation, the offense is regarded a felony for all purposes until judgment or sentence and if no judgment is pronounced it remains a felony [citations]." (*People v. Esparza* (1967) 253 Cal.App.2d 362, 364–365; *People v. Balderas* (1985) 41 Cal.3d

144, 203 & fn. 30 [where defendant pled guilty to a wobbler and was placed on probation without imposition of sentence, and the court never designated the crime a misdemeanor, the offense constituted a felony].)

Section 17, subdivision (b)(1) is inapplicable here because there was no judgment imposing a punishment other than imprisonment. The offenses were charged as felonies, Baselyos pled to them as felonies, he was sentenced to felony probation, and the trial court denied his request to reduce the offenses to misdemeanors.

A trial court's order that a defendant serve jail time as a condition of probation is not a "punishment other than imprisonment" within the meaning of section 17, subdivision (b)(1). "A jail term that is imposed as a condition of probation is not a misdemeanor 'sentence.' " (*People v. Barkley* (2008) 166 Cal.App.4th 1590, 1596; *People v. Livingston* (1970) 4 Cal.App.3d 251, 254—255 ["Appellant . . . was not sentenced to the county jail within the meaning of Penal Code section 17. His confinement was imposed as a condition of probation after conviction of a felony"]; *People v. Camillo* (1988) 198 Cal.App.3d 981, 986, fn. 2 [jail time ordered as a condition of probation " 'did not constitute a sentence within the meaning of Penal Code section 17' "]; *People v. Soto* (1985) 166 Cal.App.3d 770, 774 ["Since sentence had not yet been imposed, the grant of summary probation did not constitute a misdemeanor 'sentence' so as to render [appellant's] conviction a misdemeanor for all purposes"]; *People v. Esparza*, *supra*, 253 Cal.App.2d at pp. 363—365 [where trial court suspended imposition of sentence and placed appellant on probation on condition he serve time in county jail, appellant was not sentenced to jail for purposes of section 17; jail confinement

"was a condition of probation and did not constitute a sentence within the meaning of . . . section 17"]; *People v. Moomey* (2011) 194 Cal.App.4th 850, 857 [a wobbler offense is deemed a felony unless reduced to a misdemeanor by the sentencing court; if no sentence is ever pronounced, the offense remains a felony].)[4]

And, there has been no judgment for purposes of section 17, subdivision (b)(1). The trial court suspended imposition of sentence. (See *People v. Soto*, *supra*, 166 Cal.App.3d at p. 774 ["the trial court specifically 'suspended proceedings' when it granted summary probation and thus did not impose judgment"].) Section 1203 defines probation as the suspension of either the imposition of sentence or the execution of sentence, with an order

---

[4] Where a defendant is placed on *summary or informal* probation for a wobbler offense, courts have held that, unless the sentencing court expressly reserved jurisdiction to later impose a felony sentence, the offense is automatically converted to a misdemeanor under section 17, subdivision (b)(1). (*People v. Kaufman*, *supra*, 17 Cal.App.5th at pp. 395—397; *People v. Willis*, *supra*, 222 Cal.App.4th at pp. 145, 147; *People v. Glee*, *supra*, 82 Cal.App.4th at pp. 103—105; *People v. Soto*, *supra*, 166 Cal.App.3d at p. 775 [where court placed defendant on summary probation, but suspended proceedings and specifically reserved jurisdiction to impose a felony sentence at a later date, the offense was not automatically converted to a misdemeanor].) A grant of informal or summary probation is a conditional sentence, and conditional sentences are authorized only in misdemeanor cases. (*People v. Kaufman*, at p. 396.) Therefore, " 'by ordering summary probation, the court classifie[s a] defendant's offense as a misdemeanor.' " (*Ibid.*; *People v. Willis*, at p. 145; *People v. Glee*, at p. 104.) *Kaufman*, *Willis*, and *Glee* are inapposite here, because the trial court placed Baselyos on formal probation, not summary probation.

of conditional and revocable release under supervision of a probation officer. (§ 1203, subd. (a); *People v. Chavez* (2018) 4 Cal.5th 771, 781.) "[N]either form[] of probation—suspension of the imposition of sentence or suspension of the execution of sentence—results in a final judgment. In a case where a court suspends imposition of sentence, it pronounces no judgment at all, and a defendant is placed on probation with 'no judgment pending against [him].' " (*People v. Chavez*, at p. 781.) Without a judgment imposing punishment other than imprisonment, section 17, subdivision (b)(1) was not triggered. (See *People v. Barkley*, *supra*, 166 Cal.App.4th at pp. 1595—1596; *People v. Livingston*, *supra,* 4 Cal.App.3d at pp. 254—255; *People v. Esparza*, *supra*, 253 Cal.App.2d at pp. 364—365.)

In sum, under the circumstances present here, section 17, subdivision (b)(1) did not come into play because there was neither imposition of a punishment other than imprisonment, nor a judgment. Accordingly, the trial court did not err by declining to grant Baselyos's motion under that subdivision.

DISPOSITION

The trial court's order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.